IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1170 of 1999
Date of decision:3.11.2006

Punjab Spinning & Weaving Mills Limited, Dabwali Road, Bathinda

....Petitioner

versus

Presiding officer, Labour Court, Bathinda and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Puneet Kansal, Advocate, for the Official Liquidator.
Mr. Jagdev Singh, Advocate for the respondent-workman.

JUDGMENT:

This petition seeks quashing of award dated 4.3.1998, Annexure P.4 directing reinstatement of workman-respondent No.2 with continuity of service with full back wages.

Facts mentioned in the petition are that respondent No.2 was employed in the reeling section of the petitioner industry. She absented from duty and did not report for service. She raised an industrial dispute which was referred for adjudication to the Labour Court, vide order of the appropriate Government dated 14.10.1994. Claim of the workman is that she was working since 1.6.1980 at a salary of Rs.1230/- per month and her services were terminated on 1.4.1993 by oral order without any notice, charge sheet, enquiry or compensation. This claim was contested by the management on the plea that the workman abandoned the service and though, management offered that she may join service with continuity without back wages, the workman did not agree. The Labour Court having regard to the evidence of Vijay Kumar Gupta, Law Officer, MW1 and evidence of the workman, WW1, held that case of the workman that she herself abandoned the job or that she declined the offer of joining service, was not proved. Accordingly, termination of her service without any enquiry without any wages was violative of Section 25-F of the Industrial

Disputes Act, 1947. She was held entitled to reinstatement with continuity of service with full back wages.

Case set out in the writ petition is that even in the written statement, offer to permit the workman to join service was given; the petitioner was 100% subsidiary of PSIDC but after its dis-investment by PSIDC, the petitioner-company was in financial crisis, reference was made to BIFR on 21.3.1994; scheme of rehabilitation dated 24.4.1996 was sanctioned.

Vide order dated 29.1.1999, while issuing notice, this court directed stay of recovery of back wages if the workman was taken back in service within two weeks. On 9.8.1999, this court noticed the statement made on behalf of the management that the workman did not join service though the management was willing to allow her to join service. This statement was disputed on behalf of the workman on which a direction was issued that the Labour Inspector will take the workman for reinstatement. Thereafter, the Company was ordered to be wound up by this Court.

An additional affidavit was filed on behalf of the management to the effect that though, telegram was given, offer was made to the workman to join service in presence of Labour Inspector on 3.2.1999 but the workman failed to join service.

Affidavit filed on behalf of the management has not been rebutted on behalf of the workman.

We have heard learned counsel for the parties.

It is undisputed that the company has ceased to function, having been wound up. The workman has never worked after 1.4.1993. Only question for consideration is whether the award of the Labour Court directing reinstatement with back wages and continuity of service is liable to be interfered with. It is well-settled that award of the Labour Court is not normally liable to be interfered with in writ jurisdiction. Reference may be made to judgment of the Hon'ble Supreme Court in **Sadhu Ram v. Delhi Transport Corpn.,** AIR 1984 SC 1467, wherein it was observed:-

> "3.We are afraid the High Court misdirected itself. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals

> constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management. There was a conciliation proceeding, the conciliation had failed and the Conciliation Officer had so reported to the Government. The Government was justified in thinking that there was an industrial dispute and referring it to the Labour Court."

In the present case, however, no material has been placed on record by the workman and inspite of stay of reinstatement having been declined, the workman made no effort to seek enforcement of the award by taking any remedy or even by filing an affidavit in this court or that she approached the Labour Inspector for implementation of order of this Court dated 9.8.1999 whereby Labour Inspector was directed to go alongwith the workman so that she could join service. Only possible inference in these circumstances is that the workman never took any steps to join service and is in fact not interested in the job. In recent decisions,it has been held that award of reinstatement could not be mechanically made and the workman should prove that she was not employed during the relevant period. No such evidence was led by the management. From subsequent conduct, it is clear that the stand of the management that the workman had abandoned service, was not without any basis and plea of the workman that she was terminated from service, was not substantiated. In these circumstances, the award of reinstatement with back wages cannot be legally sustained as the same suffered from error apparent on the face of the record.

In **G.M., Haryana Roadways v. Rudhan Singh**,2005(5) SCC591, it was observed by the Hon'ble Supreme Court:-

> **"8.** There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that

> the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may before 240 days in a calendar year.

In **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey,** 2006(1) SCC 479, it was observed by the Hon'ble Supreme Court:-

> **"17.** Before adverting to the decisions relied upon by the learned counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago,

namely, when the workman was retrenched.

22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.

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61. It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman."

Accordingly, this petition is allowed. The impugned award is vacated. Claim petition of the workman is dismissed.

(Adarsh Kumar Goel)
Judge

November 3, 2006
'gs'

(Rajesh Bindal)
Judge